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GOVERNOR



LEONARD K. PETERS
SECRETARY

COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET

MINE SAFETY REVIEW COMMISSION
132 BRIGHTON PARK BLVD.
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COMMISSIONERS

WILLIAM D. DONAN, CHAIR
J. DUNCAN PITCHFORD
DAVID BRIAN SLOAN

BRYON ALAN THOMPSON
GENERAL COUNSEL

**MINE SAFETY REVIEW COMMISSION
MINUTES**

MINUTES OF THE REGULAR MEETING OF OCTOBER 11, 2012: A MEETING OF THE MINE SAFETY REVIEW COMMISSION (HEREINAFTER "MSRC" OR "COMMISSION") WAS HELD IN THE CONFERENCE AND HEARING ROOM OF THE COMMISSION LOCATED AT 132 BRIGHTON PARK BLVD., FRANKFORT KY.

- ❑ **Members Present:** The Chair and Commissioner William D. Donan, and Commissioner David B. Sloan were present. Also in attendance MSRC Hearing Officer and General Counsel Bryon Alan Thompson.
- ❑ The meeting was **called to order** at 9:00 a.m. EST
- ❑ **Declaration of a Quorum:** Upon the call of the meeting, Commissioner Donan made a motion that a quorum was present, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- ❑ **Welcome Guests:** Freddy Lewis, OMSL Director, Hon. Mike Haines, Energy and Environment Cabinet General Counsel were present and also staff attorneys for OGC; Ottley, Huffman, Long, Girard, Smock, Patrick and Russell who were representing the Office of Mine Safety and Licensing. The Office of General Counsel was assisted by Kari Sutherland, Mary McCoy, and Tara New.
- ❑ The minutes for the meeting on 08/9/12 were discussed. Commissioner Donan made a motion for approval, which was seconded. The motion carried unanimously, and was ratified by the Chair.

□ **OMSL Motions for Sanctions, Permanent or one (1) year Revocation for failure to comply with terms of the Settlement Agreement & Final Order by MSRC resolving KRS 351.120(12) workplace suspension for alcohol and substance abuse:**

- The Commission discussed the KRS 351.120(12) appeal from a suspension for alcohol and substance abuse policy violations of 11-MSRC-116 Damon U. Bates and 11-MSRC-118 Thomas Gray. The Petitioners did not appear and no one entered an appearance on their behalf or otherwise attempted resolve the allegations. OMSL moved for a **Permanent Revocation**. A motion was made to **grant** for both which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 11-MSRC-141 Kenneth A. Collett was called and requested a **modification of the prior Settlement Agreement** to extend testing and complete counseling. OMSL did not object. A motion was made to grant and seconded. The motion carried unanimously, and was ratified by the Chair.
- 10-MSRC-134 James D. Cornett was called. OMSL made a motion to **withdraw** its motion for sanctions after proof of prescriptions were presented. A motion was made to grant and seconded. The motion carried unanimously, and was ratified by the Chair.
- 10-MSRC-134 James D. Cornett was called. He did not appear but was missing one test and a statement regarding the completion of counseling. The Commission determined that a **Show Cause** for October 11 was appropriate along with a **suspension** of his certificates. A motion was made to grant and seconded. The motion carried unanimously, and was ratified by the Chair.
- 11-MSRC-072 Michael Jacobs was called and appeared. He claimed impossibility of performance and requested an extension of time to complete testing. He was ordered to take **seven more monthly tests**. A motion was made to grant and seconded. The motion carried unanimously, and was ratified by the Chair.

□ **KRS 351.120(12) Petitions heard regarding miner appeals of workplace suspension for alcohol and substance abuse – “simple” revocations:**

- The Commission discussed each in turn the procedurally similar KRS 351.120(12) appeals from suspensions for alcohol and substance abuse policy violations of 12-MSRC-158 Terry Joseph Smith, 12-MSRC-159

Dustin Heltsley who were both called in turn. Each Petitioner appeared and requested a **Settlement Agreement** to resolve the allegations. A motion was made to **grant**, each of their settlements which were seconded as appropriate. The motions carried unanimously, and were ratified by the Chair.

- 12-MSRC-160 Eric Nathan Camplin was called and requested a hearing and presented evidence, testimony and documentation that demonstrated that more likely than not the determination of **suspension was in error**. He moved to **sustain** his appeal. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 12-MSRC-157 Patrick Drake, 12-MSRC-161 Kevin R. Davidson were each called and did not appear. OMSL moved to **Show Cause** for not less than one year. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 12-MSRC-118 Jason Phillips, 12-MSRC-155 Christopher Lovell were each called in turn regarding a Show Cause issued at the last meeting for their failure to appear or participate in the hearing they requested. No one appeared at this meeting, thus OMSL moved for **1 year revocation**. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 12-MSRC-072 Randal A. Snyder was called and after testimony and discussion the Commission determined this should be **continued** ninety (90) days for Snyder to make a show of good faith towards rehabilitation. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.

The 11:00 a.m. Docket for KRS 351.120(12) workplace alcohol and substance abuse suspensions that were not appealed – “simple” one year revocations:

- 12-MSRC-122 Davin Day, 12-MSRC-123 Matthew A. Bevins, 12-MSRC-124 Charles Scott, 12-MSRC-125 Hi J. Carter II, and 12-MSRC-126 Douglas S. Koon 5 year revocation were each called in turn regarding the Show Cause issued for each of their cases for their failure to request a hearing. No one appeared at this meeting, thus OMSL moved for **5 year revocation**. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.

- 12-MSRC-120 Jason S. Cooper was called. Good reasons were presented for discovery as a cause for a **continuance**. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 12-MSRC-066 William Nathan Hall was called and requested a **settlement**. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.

11:00 a.m. failed to appeal or chose drug treatment cases – 3 year revocation

- 12-MSRC-162 Ronnie T. Shepherd, 12-MSRC-163 Kevin D. Wells, 12-MSRC-164 Jimmy Herrington, 12-MSRC-165 Brian G. Gibson, 12-MSRC-166 Jeramie L. Johnson and 12-MSRC-167 Stanley Lawrence Collins were each called in turn. They did not appear or participate in any way and thus OMSL moved for a **3 year revocation**. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.

11:00 a.m. completed treatment & clean test drug cases, reinstate

- 12-MSRC-168 Scott Gish presented proof of compliance with the statute regarding **reinstatement after treatment**. OMSL moved that he be reinstated. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.

The 11:00 a.m. Docket for Reciprocity actions regarding Virginia Drug Sanctions:

- None submitted for this meeting

The 11:00 a.m. Docket for Petition for Roof Control Violation Orders:

- None submitted for this meeting.

The 11:00 a.m. Docket for Motions to Modify prior Orders:

- None submitted for this meeting.

11:00 a.m. Appeal of Penalty Assessment

- None submitted for this meeting.

The 11:00 a.m. Docket for “traditional” type cases:

- 10-MSRC-020 **Noah Vance**, was called for a **Status Report**. Counsel for the parties agreed upon a hearing date of March 14, 2013. This was so moved, seconded and passed unanimously.
- 09-MSRC-071 **Robert Salyer** “Cloverlick” was called for a **pre-hearing**. Counsel for the parties agreed upon a hearing date of April 11, 2013 and a discovery deadline thirty days prior to the hearing. This was so moved, seconded and passed unanimously.
- 11-MSRC-119 **River View Coal**, was called in regard to a probable settlement. Counsel for the parties agreed upon **continuing** the hearing date to December 12, 2012 and indicated that settlement was likely. This was so moved, seconded and passed unanimously.
- 11-MSRC-166 **Chad B. Jarrell**, was called in regard to a non-licensed facility drug suspension, whereas he did not appear OMSL moved for a **default**. This was so moved, seconded and passed unanimously.
- 11-MSRC-167 **James D. Francis**, & 12-MSRC-143 **James D. Francis** was called in regard to two drug policy violations at two different facilities where he did not appeal or contest. OMSL moved for a **default** for a 5 year revocation and consolidation of the cases. This was so moved, seconded and passed unanimously.
- 11-MSRC-168 **Jordan D. Wilkins**, was called and did appear. He requested a **settlement** agreement regarding this non-licensed facility drug suspension. This was so moved, seconded and passed unanimously.
- 12-MSRC-008 **Blankenship** was called and OMSL informed the Commission that a settlement was pending. OMSL requested a continuance to November 8 to allow time for ratification. This was so moved, seconded and passed unanimously.
- 12-MSRC-009 **Marsee, Neace, Magnuson & Wyss** was called. Marsee appeared and gave proof and testimony sufficient for OMSL to withdraw the allegations as to him and thus Marsee was **dismissed**. The remaining defendants did not appear or defend thus OMSL move for a **default**. This was so moved, seconded and passed unanimously.
- 12-MSRC-010 **Cole, Smith & Pauley** is a hybrid drug & traditional case and only Cole appeared. Cole requested a **settlement** and the

other two defendants failed to appear and participate so OMSL moved for a **default**. This was so moved, seconded and passed unanimously.

- 12-MSRC-092 **Bell County Coal** was called and presented a settlement. OMSL requested adoption of the **settlement** agreement as the Commissions Final Order. This was so moved, seconded and passed unanimously.
- 2-MSRC-114 **John W. Mayo** was called regarding a pending settlement. OMSL requested a continuance to November 8. This was so moved, seconded and passed unanimously.

The 1:00 p.m. Docket for “traditional” type cases:

- None submitted for this meeting.

Old Business

Ratification of Final Order:

None submitted for this meeting.

Administrative Hearings Update;

The Commission discussed briefly the continuing high number of cases set for the next meeting and the possibility of one or more traditional type hearings.

Status Report & Abeyances;

None submitted for this meeting.

Appeals

The Commission discussed the status of the appeal to Franklin Circuit Court of the Final Order in 07-MSRC-088 **Jerry J. Maggard**, et al. Hon. Smock, counsel for OMSL stated the matter has been **submitted** for a ruling.

New Business

Office & Administrative;

- The General Counsel advised that the **mileage** remains forty eight (48) cents per mile.

□ **Training**

□ **Required Hearing Officer Training:** Next required Hearing Officer Training is on **June 2013** at the KY History Center.

□ **Executive Session:** The Commission adjourned to conduct an Executive session to discuss the motions & settlements in the cases as above and then reconvened to issue its determinations.

□ **Probable Cause Determinations**

12-MSRC-156 Brandenburg, Burnett, Caldwell, Craig, Napier & Saylor. was submitted and OMSL moved for **Probable Cause**. This was accepted, seconded and unanimously approved.

□ **Settlement Agreements**

The Settlement Agreements were managed as indicated above in the Motions and suspensions sections.

□ **The Time Memo and Travel Vouchers** were signed and submitted for payment by the General Counsel.

□ **NEXT MEETING:** The Commissioners acknowledged that MSRC is regularly scheduled for a regular two day meeting on Starting on **Thursday November 8, 2012**.

□ **Adjournment:** Commissioner and Chair Donan made a motion to adjourn, which was seconded by Commissioner Sloan. The motion carried unanimously, and was so Ordered.

The next meeting of the Mine Safety Review Commission will be held on Thursday November 8, 2012. The meeting will be held in the conference and hearing room of the Commission located at 132 Brighton Park Blvd., Frankfort KY.

Approved:



Hon. William D. Donan Chair
Mine Safety Review Commission

8 Nov 2012

Date